IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.817 of 2007

A. Subbiah .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition & Excise Department
   Fort St. George, Chennai 600009.

2. The District Collector and
   District Magistrate
   Erode District
   Erode. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.A.K.S.Thahir

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER
(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner is the father of the detenu Selvam @ Suresh Kumar. The detenu was incarcerated by order dated 8.4.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 8.4.2007 in Cr.M.P.No.5/2007/C1 against his son, who is

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now confined at Central Prison, Coimbatore, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 8.4.2007 came to be passed based on the ground case said to have taken place on 26.2.2007 at 7.30 p.m., on the basis of the complaint lodged by one Sivaprakash on the file of Kavindapadi Police Station. According to the complainant, while he was going along with his wife Thenmalar in his motor cycle towards Kuttiagounden Pudur from Erode, a Tata Sumo Car came speedily and halted, obstructing their way. Three persons came from the car, one was holding a gun and another was having a knife. They demanded the jewels worn by Thenmalar both at gun and knife points. When they refused, one among them snatched the hand bag kept by Thenmalar, which contains a Nokio cell phone, keys of the house and a cash of Rs.450/-. The complainant and his wife raised hue and cry. On hearing their alarm, the public nearby tried to apprehend them on the spot. On seeing the public, the car sped away and the three persons ran in different directions and escaped from the scene of occurrence. In this regard, a case was registered in Crime No.168 of 2007 under Section 392 r/w 397 IPC. During investigation, it was found that one of the three persons is the detenu herein. The detenu was arrested on 13.3.2007 and remanded to judicial custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are six adverse cases pending against the detenu for the offence punishable under Section 379 IPC and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 8.4.2007 mainly on the ground of delay in considering the representation dated 20.4.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case. According to the learned counsel for the petitioner, there was a delay in circulating the file by the Government, which vitiates the order of detention.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

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5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 8.4.2007. A representation was made on behalf of the detenu to the detaining authority on 20.4.2007 and the detaining authority received the same on 24.4.2007. After calling for parawar remarks from the Sponsoring Authority, a report was sent to the Government on 9.5.2007. But, the file was circulated only on 17.5.2007, with a delay of eight days. The Under Secretary dealt with the file on 17.5.2007 and the Additional Secretary dealt with the file on 18.5.2007 and ultimately the representation was rejected by the Minister concerned on 21.5.2007. The delay in circulating the file by the Government, viz., between 9.5.2007 and 17.5.2007 - a period of eight days, was highlighted by the learned counsel for the petitioner. Even though 12.5.2007 and 13.5.2007 happened

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to be public holidays, there is no convincing reply on behalf of the State for the delay in circulating the file by the Government. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for six days (excluding Saturday and Sunday), between 9.5.2007 and 17.5.2007. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is a delay of six days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 8.4.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

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Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government,
   State of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600009.

2. The District Collector and
   District Magistrate
   Erode District
   Erode.

3. The Superintendent,
   Central Prison,
   Coimbatore.

4. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

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